

5	Applicants:	Islam et al.)	Art Unit:	2618
)		
	Serial No.:	10/693,346)	Examiner:	Alam
)		
	Filing Date:	24 October 2003)	Docket No.:	555255012610
10)		

15 MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Applicants respectfully submit this **Reply Brief** in response to the Examiner's Answer mailed on 26 November 2008 for the above-referenced patent application.

REPLY BRIEF

The Applicants respectfully submit this Reply Brief in response to the Examiner's Answer mailed on 26 November 2008 for the above-referenced patent application.

5

In the Examiner's Answer, the Examiner provides a "Response To Argument" in section (10) on pages 23-28, in attempt to counter the Applicants' arguments in the Appeal Brief of 24 September 2008.

- 10 In response, the Applicants hereby confirm the previous reasons for allowability and respectfully submit that the Examiner's arguments continue to fail. The Examiner continues to either misunderstand or mischaracterize the teachings in the references, as described below.

15

REGARDING AT LEAST CLAIMS 1-6, 11-17, 23-29, and 36-37

1. In the Examiner's Answer on page 24 at lines 3-9, the Examiner states that

5

"Feder also discloses in paragraph [0017] that the invention allows for switching between cellular networks, i.e. plural cellular base stations."

10

In response, the Applicants respectfully disagree with the Examiner's assertion, as the Examiner clearly takes language from Feder et al. out of context.

In paragraph [0017], Feder et al. actually states the following:

15

Thus, according to an exemplary embodiment, the present invention may allow for seamless switching between cellular networks and wireless packet data networks. (Emphasis Added By Applicants)

20

Indeed, Feder et al. associates "cellular networks" with 3G systems and "wireless packet data networks" with 802.11-based systems.

25 Thus, there is a clear distinction between the meaning of Feder's actual description of "switching between cellular networks and wireless packet data networks" and the Examiner's asserted "switching between cellular networks." As apparent, the Examiner's statement is misleading.

30 To the contrary, Feder et al. do not teach or suggest that its switching technique for laptop computers should be performed between two different cellular networks –

i.e. between 2G (voice) and 3G (packet data + voice) cellular networks. Feder et al. is directed to disparate or heterogeneous data networks. See Feder et al. in paragraph [0019]:

5 In step S10, the SSA instructs the mobile
station to scan the environment to detect
available systems. The system detected by the
mobile station may include systems of a type,
10 which is different than, and disparate (i.e.
not compatible) with respect to, the system
currently serving the mobile station. (Emphasis
Added)

As apparent, the Examiner's arguments fail.

15

2. In the Examiner's Answer on page 24 at lines 11-15, the Examiner states that

20 where both a new cellular network and a legacy
cellular network are deployed, in light of
Feder one would choose the new cellular network
even though the signal quality is better than
the legacy cellular network in order to provide
25 better quality of service, such as better,
bandwidth, data rate, etc. (Emphasis Added)

In this case, the Applicant agrees with the Examiner's assertion, as what the Examiner describes is a conventional technique.

30

The Applicants do not claim the conventional technique, however. In accordance with the present inventive technique, the new cellular network is chosen even when the signal quality is worse or less than the legacy cellular network – contrary to

traditional cellular network standards (as described in the Applicant's Appeal Brief on pages 16-19, for example).

5 3. In the Examiner's Answer on page 26 at lines 7-17, the Examiner suggests that there are reasons to modify the teachings of Feder et al., stating that

10 the advancement and capabilities of mobiles devices has increased so much that there is no clear line to discern between a cell phone and a laptop. The two are synonymous considering the capabilities of the cell phone that are known in the art, they can perform most of the function done by laptops and vice-a-versa.

15

Despite what the Examiner argues generally, the clear intent of Feder et al. is to accommodate data-only devices, such as laptop computers, and not voice telephone devices. Laptop computers have not traditionally demanded support to provide voice calls over voice (or circuit-switched) networks.

20

Indeed, the title of Feder et al. is "System And Method For Establishing And/Or Maintaining A Data Session Across Packet Data Networks" (Emphasis Added). Traditional 2G networks are not packet data networks, but are voice (or circuit-switched) networks for voice telephone calls.

25

What is claimed in the present application relates to "a mobile telephone ... operative in accordance with a circuit switched voice service" or the like (see e.g. claim 1). The Applicants inventive technique is contrary to traditional cellular network standards which support voice calls.

30

Even further, the Examiner does not provide any explanation of why or how the laptop computer of Feder et al. would consider selection and operation with a voice network (e.g. 2G network) for its packet data communications, and switch from operation with the voice network to the data packet network for the packet data
5 communications.

Finally, Feder et al. is silent on use of 2G networks because it did not seek to employ them. Feder's silence regarding 2G network usage should be viewed in contrast to its specific and detailed identification of various other types of data-communicating
10 networks: see the list in Feder et al. in paragraphs 16 and 17, which include 3G, WLAN, IEEE 802.11 systems, Bluetooth-based personal area network (PAN) systems, and cdma2000, UMTS, 3G-EVDO, 3G-EVDV, and HSDPA.

As apparent, this is more supportive of the fact that Feder et al. did not intend to
15 employ its switching technique in connection with 2G systems, i.e. between 2G and 3G cellular systems.

5. In the Examiner's Answer on page 25 at lines 8-10, the Examiner
20 states that

appellant asserts that Feder selects the 3G network only if it has a greater signal quality than the other network (see appeal brief p.
25 14).

Again, the Examiner takes language out of context. The Applicant actually states on page 14 of the appeal brief that

5 In fact, in the rule tables of Feder et al.,
the 3G cellular network is selected only if it
has a greater signal quality than the other
network. See e.g. Example 3, Table 3 in
paragraphs [0079-0081] of Feder et al. (Emphasis
Added)

The reason that the Applicants make reference to the rule tables of Feder et al. in
the above-discussion is because the Examiner previously relied on them in the claim
10 rejection. The Examiner now attempts to rely on a different section of Feder et al. in
paragraph [0058] in the argument on page 14 of the Appeal Brief. However, the
Examiner's reliance on the passage is disconnected from the initial argument.

15 6. In the Examiner's Answer on page 25 at lines 19-22 through page 26
at lines 1-6, the Examiner indicates that a 3G system would be selected even though
the quality for the 802.11 system is better according to the preference rules in table
3.

20 In response, the Applicants still disagree and submit that the analysis is clearly
misleading. The classifications in Feder et al. only exist due to the disparate nature
of the networks. If signal measurements of the same type from homogeneous
networks were taken in Feder et al. (e.g. E_{c/I_0} ratios from 2G and 3G cellular
networks per the present invention) there would be no reason to utilize the
25 classifications or rule tables that over generalize the signal measurements. The
signal measurements would be of the same type – they would not need to be
categorized as the signal measurements can be compared directly to one other for
assessment. These arguments apply equally with respect to the passage in
paragraph [0094] of Feder et al. regarding the monitored conditions being “roughly
30 equivalent.”

REGARDING AT LEAST CLAIMS 7-10, 18-22, 30-35, and 38-39

7. In the Examiner's Answer on page 28 at lines 4-8, the Examiner still argues that

5

Kingdon discloses ... producing and sending a list of six cell identities from a plurality of cell identities based on signal strength, thereby effectively excluding certain cell identifiers. (Emphasis Added)

10

The Applicants respectfully submit that the Examiner still misreads the claims. The claims recite that the exclusion of identifiers is "based on identifying that the ...
15 system fails to provide the 3G or greater communication service" or the like – not based on signal strength. Nowhere in the references is it taught that a list should exclude a cell identifier based on identifying the system's failure to provide a 3G or greater communication service. The Examiner identifies none.

20

8. In the Examiner's Answer on page 28 at lines 16-18, the Examiner states that "it is not too late to show obviousness since an obviousness rejection always existed since the Final Office Action."

25

In response, the Applicants agree that a rejection of claims has existed since the Final Office Action. However, claim rejections must be properly established. The Applicants assert that a proper, prima facie case of obviousness must include articulations of any inherency. In this case, the Examiner has failed to articulate any reasoning regarding inherency until the Advisory Action.

30

Thus, the Examiner's rejections have failed on the basis of inherency alone until the Advisory Action, and still fail.

- 5 The Examiner should attempt to establish a proper, prima facie case of obviousness in communications prior to the Advisory Action so that the Applicants have an adequate opportunity to sufficiently rebut rejections for furtherance of prosecution of the application. Upon such failure, the Examiner should issue a new Office Action to give the Applicant proper hearing.

10

Based on the above, the Applicants respectfully submit that the Examiner's § 103(a) rejections are unwarranted and fail. It is believed that all pending claims are allowable over the prior art of record, and the Applicants respectfully request the Board to direct the Examiner to withdraw the rejections and allow the application.

5

Thank you for your consideration. The Board is invited to contact the undersigned if necessary to expedite prosecution of this case.

10

Respectfully Submitted,

/John J. Oskorep/

15

Date: 26 March 2009

JOHN J. OSKOREP

Reg. No. 41,234

20

*JOHN J. OSKOREP, ESQ. LLC
ONE MAGNIFICENT MILE CENTER
980 NORTH MICHIGAN AVENUE, SUITE 1400
CHICAGO, ILLINOIS 60611 USA
Telephone: (312) 222-1860 Fax: (312) 475-1850*

25